

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Peter Kosakowski, c/o Steven Pikul, Berkshire Design Group

Date application filed with the Town Clerk: September 17, 2007

Nature of request: A Special Permit for a flag lot under Section 6.3 of the Zoning Bylaw

Address: West Bay Road (Map 25B, Parcel 3, R-O Zoning District)

Legal notice: Published on September 26 and October 3, 2007 in the Daily Hampshire Gazette and sent to abutters on September 24, 2007

Board members: Tom Simpson, Russell Frank and Hilda Greenbaum

Submissions: The petitioner submitted a site plan of the proposed flag lot, drawn by The Berkshire Design Group, Inc., dated 9/10/07.

Town staff submitted the following:

- A memo from the zoning assistant outlining the Zoning Bylaw regulations for creating a flag lot, dated 10/4/07.
- An email from the Planning Department Director concerning the limits of the application, dated 10/12/07.

Site Visit: October 9, 2007

One member of the Board visited the site separately, and the other two members met with Mr. Pikul and Peter Wells of Berkshire Design at the site. They observed the following:

- A flat farmland parcel that is surrounded on three sides by Hampshire College land;
- Hampshire College interior road and buildings directly to the north of the applicant's land, the Eric Carle Museum to the west and a house on a large lot to the east;
- West Bay Road, a heavily traveled road, with major traffic congestion to the east at the corner of Bay Road and Route 116;
- Empty space across the street that is scheduled to be developed.

Public Hearing: October 11, 2007

Engineer Steve Pikul of The Berkshire Design Group represented the petitioner at the hearing. He gave the following information:

- Two frontage lots were created from the petitioner's large parcel via the ANR (Approval Not Required) process with the Planning Board;
- Each of the frontage lots are over 47,000 square feet;
- The two lots plus the proposed flag lot are around 175,000 square feet;
- The three parcels are bordered on three sides by Hampshire College;
- The proposed flag lot has a 310 ft. pole that is 40 ft. wide;

- The buildable area of the flag lot is over 66,000 sq. ft.;
- All the dimensional requirements of a flag lot are met, as outlined in the memo from the zoning staff assistant;
- A soil investigation was performed by Alan Weiss; four percolation tests were performed and the water drains at 7" per minute;
- The petitioner doesn't plan to connect to the Town sewer line, but will connect to the water line;
- A future builder will develop a driveway plan and septic layout to submit to the Board at a public meeting if the Special Permit is approved.

Mr. Simpson asked if the three lots are under common ownership. Mr. Pikul said that they still are.

Mr. Simpson asked if the proposed flag lot meets or exceeds all Zoning Bylaw regulations. Mr. Pikul replied that the proposal meets all requirements for a flag lot.

Mr. Simpson asked if there are any ideas for the driveway. Mr. Pikul said that the land slopes gently to the east by no more than 4-5 feet over the three lots, approximately 350 feet. From Bay Road to the back of the flag lot, about 500 feet, the land slopes downward by about 10 feet. The land is open pastureland, bordered on the west next to the museum by a grove of apple trees and on the north by woods. No fill will be necessary to create a driveway.

Mr. Simpson noted that there is much heavy traffic on West Bay Road that backs up at the intersection to the east. A common driveway for all three lots might be most desirable.

Mr. Pikul said that there may be duplexes on all three lots, and only one driveway could be a problem. Ms. Greenbaum said that perhaps a common driveway with a round-about could solve the problem.

Ms. Holstein, the zoning assistant, reminded the Board that they could not condition one driveway for all three lots since the frontage lots are independent of this Special Permit application. The other lots were created separately through the ANR process and stand on their own. One solution may be to provide access to the other lots from the flag lot driveway, but the Board cannot require the frontage lots to use a common driveway.

Mr. Simpson suggested that the flag lot driveway could have an easement for access by the other lots both on the pole and across the southern portion of the buildable area. The other lots could choose to use the flag lot driveway if they wished.

Mr. Pikul responded that it would be difficult to have a 150' diameter building circle as required by the Zoning Bylaw (Section 6.35) if there were an easement on the buildable area of the flag lot.

Mr. Simpson asked for comments from the public. Attorney Michael Pill said that he was representing Hampshire College, which has concerns. He said the following:

- The lots are taking a bite out of the college campus;
- The ANR process for the frontage lots is not cast in stone;
- Will the drainage go away from the lots to the east onto college land?
- The Board could deny the permit for the flag lot and make a condition for future subdivision applications that there be a shared driveway;
- There will be intensive development around the future traffic circle (Bay Road and Route 116) and Hampshire College has to plan for the future;

- The petitioner did not supply any “findings of fact” under Section 10.38 of the Zoning Bylaw; for example, Sections 10.380 and 10.381 ask “Does the proposal fit into the neighborhood”;
- The applicant must follow the law; the applicant must find the facts to satisfy Section 10.38, then the College can respond to the applicant’s analysis;
- The applicant is brushing off the access and drainage issues required of Section 6.37; the drainage must be adequate;
- The College wants the applicant to “work to rule”;
- The applicant might want to re-configure the ANR to have shared access for the lots.

Mr. Simpson asked if there were any drainage problems in the area. Mr. Pill said that there are none known, but the College has to worry for the future. In his opinion, the applicant has to prove there are no drainage problems.

Mr. Simpson said that the Board learned at the site visit that there may be a subdivision for 12 houses across the road. An entry road also is planned. Access to individual driveways could be a problem for residents along West Bay Road, Mr. Simpson said.

Mr. Pikul said that he and the applicant want the best for the Town. However, there is no point in doing drainage studies now. They will be needed later, when houses are proposed for the lots. Grading for the houses and driveway will be needed. Conducting drainage studies now would be redundant and not helpful to home builders in the future.

The Board asked if the applicant had considered having the flag pole up the middle between the frontage lots, or a driveway up the middle for access to all three lots. Mr. Pikul said that Berkshire Design considered several design options. However, an old cellar hole exists between the two frontage lots which they’d like to avoid. Under DEP Bylaws, it is not an isolated wetland subject to flooding, but the surrounding trees are a nice shield and a border for the two frontage lots. If the trees are taken away, the landscaping will be gone, and that will negatively impact the environment.

Ms. Greenbaum suggested that the applicant could go back to the drawing board and create a cul-de-sac or a “T” shaped shared driveway. Mr. Pikul responded that they looked at a cul-de-sac, but a circle eats up a lot of land, and they found it difficult to design the lots.

Mr. Simpson said that he sees no reason why the driveway could not be a common one. He would prefer a driveway that would serve all three lots. To achieve that will be the applicant’s responsibility.

Larry Archey, head of Building and Grounds at Hampshire College, said that the College does not have the expertise in-house to analyze the situation. The College has no intention of appealing the application, but what is being asked here of the applicant is the same as what the College has been asked by the Town before. Hampshire College has had to meet the level of analysis of Section 10.38 of the Zoning Bylaw, for example.

The Board and the applicant agreed to continue the hearing in order to obtain more information.

Mr. Simpson made a motion to continue the hearing to November 13th at 7:30 PM. Mr. Frank seconded the motion, and the vote was unanimous to continue the hearing to November 13, 2007 at 7:30 PM.

Continued Public Hearing November 13 and December 12, 2007

The petitioner asked to continue the hearing to December 12, 2007, and the Board agreed to do so.

At the December 12, 2007 continued hearing, Peter Wells of Berkshire Design spoke to the application. Owners Peter and Tracie Kosakowski and Attorney Peter MacConnell also were present.

Mr. Wells gave the following information:

- He presented visuals which showed the parcel, the subdivision of that parcel into three lots, the distance to the corner of Bay Road and Route 116 and the former cellar hole between the two frontage lots;
- He said that the proposed flag lot meets all the requirements of Section 6.3 of the Zoning Bylaw, as discussed at the previous part of the hearing on October 11, 2007;
- He said that the cellar hole is not a “resource area” and the hole is located on the frontage lots, not on the proposed flag lot area;
- He submitted his write-up of the findings required of all Special Permits, Section 10.38 of the Zoning Bylaw;
- He requested the following conditions, saying that they are similar to those found in other flag lot Special Permits:
 1. The petitioners shall submit a final revised site plan to the Board for approval at a Public Meeting indicating:
 - a) The final location of the building envelope and driveway;
 - b) The final grading and drainage plan for the driveway.
 2. The driveway shall be at least 12 feet wide with clear shoulders of two feet on either side for snow storage.
- The reason for the request is that the applicants do not have a buyer for the parcels yet, but will design the driveway when a dwelling is planned;
- They do not know yet whether the driveway will be paved or gravel, curved or straight, or the variations in the slope at different parts of the driveway; thus it’s best to wait until a lot will be developed;
- The driveways will be straightforward to design – access is good, the land has less than a 2% slope overall, the soil is well drained, the water table is 103 inches down from the surface, there is very good soil and good visibility overall;
- If a common driveway is planned, they would like the flexibility to design it later.

Ms. Greenbaum asked if a common driveway was planned for just two lots.

Mr. Wells replied that the map shown to the Board assumes that the flag lot driveway will be along the access strip. They do have another “concept”, but whether it is a viable alternative is something that he’d like to discuss with the Board.

Mr. Wells showed the other “concept” to the Board, a drawing of a driveway curving through the center of the two frontage lots, using land from both of the frontage lots. The common driveway section would be approximately 200 feet long, with a private driveway peeling off for each of the frontage lots. At the end of the common driveway would be an area for emergency vehicles to turn around. The private driveway for the flag lot would continue on after the common driveway for another 200 feet. The common driveway would be 14-16 feet wide, with 2-foot shoulders on each side. The individual driveways would be 12 feet in width. The two frontage lots will have deed restrictions for the shared driveway. Since the driveway is not designed yet, the exact shape and access to the common driveway may be different than in the conceptual drawing shown to the Board.

Mr. Simpson said that he liked the shared driveway concept.

Larry Archey, Hampshire College Building and Grounds, stated that the shared driveway concept is an appealing plan.

Michael Pill, attorney for Hampshire College, said that he wanted the Board to be clear that Mr. Archey was giving his own opinion only. It does not constitute the official Hampshire College opinion.

Attorney Peter MacConnell said that if the Board prefers the common driveway concept, deed restrictions for the frontage parcels can be added; the flag lot will be subject to the common driveway restriction as well. The deed restrictions will divide the responsibility for driveway maintenance three ways, so that each lot will be responsible for 1/3 of the driveway maintenance (snow removal, repaving, etc.)

Mr. Simpson said that it's important to have the shared driveway meet the 16-foot width of Section 7.712 of the Zoning Bylaw so that there can be two-way traffic, especially at the Bay Road exit. The pavement type is negotiable, but the width is not.

Mr. Wells noted that the driveway will flare out at Bay Road, and will be 25-30 feet wide where it meets Bay Road. There is no curb along this section of the road.

Ms. Greenbaum noted that a shared driveway is much safer, especially in this location.

Mr. Simpson reminded the Board that they should consider two things – the flag lot and the concept of a shared driveway.

Ms. Greenbaum worried that a 12-foot wide driveway for the flag lot house may not be wide enough for emergency vehicles. There was discussion of where the turnaround for emergency vehicles would be; all agreed that it should be at the end of the common driveway and also at a turnaround for each individual house. Mr. Simpson noted that plans for a common driveway would be transmitted to four departments for their review – Fire, Town Engineer, Planning and the Building Inspections. Prior to a ZBA public meeting to review and vote on approval of the driveway, including drainage and lighting, statements from at least the Fire Department and the Town Engineer would be needed. The Fire Department will determine whether the emergency vehicle turnaround is adequate, and the Town Engineer will review the access and drainage.

Ms. Greenbaum made a motion to close the evidentiary part of the hearing. Mr. Frank seconded the motion, and the vote was unanimous to close the evidentiary part of the hearing.

Public Meeting:

The Board was unanimous in agreeing that the shared driveway was superior to the original plan of two or three separate driveways for the three lots.

The Board reviewed the “findings” of the Zoning Bylaw Section 10.38 submitted by the applicant and found them acceptable, except for one directional error in Section 10.395. The zoning assistant stated that she would base the Board’s findings in part on those submitted by the applicant.

The Board approved and signed the site plan for the flag lot drawn by the Berkshire Design Group, Inc. dated 9/19/07. They had noted earlier that the flag lot design meets all the specifications of Section 6.3 of the Zoning Bylaw.

The remainder of the public meeting was devoted to crafting conditions of the Special Permit if it were to be granted.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because there are residential lots adjacent to the proposed flag lot and to the south, across Bay Road. In addition, except for Hampshire College land, the bulk of Bay Road in either direction is residential or farmland.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the petitioner has stated that they will make every effort to retain existing vegetative screening next to abutting properties. In addition, the flag lot and the abutting two frontage lots are very large, designed for either single family or two-family use.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because a shared driveway will provide ample distance to avoid turning conflicts with the residential properties to the south or the Eric Carle Museum to the west. Final approval of the design of the driveway will rest with the Board at a future public meeting, as stated in one of the conditions of this Special Permit.

10.384 and 10.389 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because all the conditions of Section 6.3 of the Zoning Bylaw for a flag lot are met with the proposal and the shared driveway will be part of the deed for the flag lot and the two frontage lots. In addition, the site has access to Town water, and the percolation tests have met the necessary conditions for Title V approval of the proposed septic system. Refuse and recycling disposal will be the responsibility of home owners, as determined by the Amherst Board of Health regulations.

10.386 – The proposal ensures that it is in conformance with the parking regulations of the town because two parking places will be provided for each dwelling unit and the conditions of the Special Permit will dictate the specifics of the driveway, following Section 7.7 of the Zoning Bylaw.

10.391 and 10.392 – The proposal protects unique or important natural, historic or scenic features because the petitioner has stated that every effort will be made to retain the existing vegetative screen next to abutting properties. Also the residence for the flag lot will be located approximately 400 feet from West Bay Road and will be approximately 8 feet below the roadway elevation, according to the petitioner.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because the conditions of the permit will require that all external lighting for the flag lot residence and the driveway will be downcast.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because there are a variety of housing types to the south across West Bay Road, and the two frontage lots abutting the proposed flag lot also will have residences on them. There also is a residence to the east of the flag lot that is owned by Hampshire College. The applicants have indicated that they will retain the existing apple trees and other vegetative screen between the flag lot and the Eric Carle Museum to the west.

10.397 – The proposal provides adequate recreational facilities, open space and amenities for the proposed use because the flag lot is very large, flat and open which is suitable to passive recreation.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting – Zoning Board Decision

Mr. Simpson made a motion to APPROVE the application for a flag lot under Section 6.3 of the Zoning Bylaw. Mr. Frank seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit for a flag lot under Section 6.3 of the Zoning Bylaw at West Bay Road (Map 25B, Parcel 3, R-O Zoning District) as requested in the application filed by Peter Kosakowski, with conditions.

THOMAS SIMPSON

RUSSELL FRANK

HILDA GREENBAUM

FILED THIS _____ day of _____, 2007 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2008.
NOTICE OF DECISION mailed this _____ day of _____, 2007
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2007,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit for a flag lot under Section 6.3 of the Zoning Bylaw at West Bay Road (Map 25B, Parcel 3, R-O Zoning District) as requested in the application filed by Peter Kosakowski, subject to the following conditions:

1. The flag lot shall be configured as shown on the plan drawn by The Berkshire Design Group, Inc., dated 9/25/07 and approved at the public meeting of the Board on December 12, 2007 and on file in the office of the Zoning Board, Planning Department.
2. The flag lot shall be accessed by the common driveway proposed by the applicant; the use of said driveway may be shared with the two adjacent frontage lots to the east of the flag lot access strip that are currently owned by the applicant.
3. Legal easement documents for the common driveway, including provisions for driveway maintenance, shall be filed with the Registry of Deeds and submitted to the Board at a public meeting prior to issuance of a building permit for the driveway.
4. The applicant shall submit a site plan to the Board for consideration at a public meeting prior to issuance of a building permit showing the location of the proposed house on the flag lot, exterior lighting, driveway location and design, drainage information related to the driveway and residential construction, and any plantings associated with said construction.
5. Both the common driveway, which shall be at least 16 feet wide, with 2 foot shoulders, and the individual driveway for the flag lot shall conform to Section 7.7 of the Zoning Bylaw in its entirety.
6. The emergency turnaround area shall be unobstructed and kept clear of ice, snow and vegetation.
7. Any exterior lighting shall be downcast.
8. Reflectorized street numbers shall be placed at the end of the shared driveway, able to be seen in both directions along West Bay Road.
9. This Special Permit is subject to Section 14 of the Zoning Bylaw, Phased Growth. Development authorization is available as of February 1, 2008.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE